

## **DEPARTMENT OF STATE REVENUE**

### **Revenue Ruling #2000-09 ST**

**October 31, 2000**

Notice: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

Sales/Use Tax – Application of sales/use tax on a catering service's service charges.

Authority: IC 6-2.5-4-1(g)

The taxpayer requests the Department to rule on the taxability of service charges related to catering.

### **STATEMENT OF FACTS**

The taxpayer is an Indiana catering service which charges a 15% service charge on the total amount of their invoices which range from room rental to food and beverage to equipment rental to various other charges. The 15% service charge is figured on the total invoice and then the sales tax is computed on the total invoice amount including the service charge. This charge is for the labor and wages paid out to set up and work the event, insurance, and other operational costs. The service charge is not a gratuity and is stated separately on the invoice.

### **DISCUSSION**

IC 6-2.5-4-1(g) states:

Gross retail income does not include income that represents charges for serving or delivering food or beverages furnished, prepared, or served for consumption at a location, or on equipment, provided by the retail merchant. However, the exclusion under this subsection only applies if the charges for the serving or delivery are stated

separately from the price of the food or beverages when the purchaser pays the charges.

This statute is intended to exempt only those services which are directly related to serving and/or delivering food. The intent is not to provide a blanket exemption for overhead charges while serving and/or delivering food. Therefore, a 15% service charge to serve and/or deliver food would be exempt from sales/use tax. Service charges for insurance and other operational costs would not be exempt. Even a service charge for preparing food in this case is subject to sales/use tax, as the preparation of the food is not part of the serving and/or delivery of the food. In the case that the charges are exempt, they must be separately stated on the invoice and excluded from the calculation of the total tax due.

### **RULING**

The Department rules that separately stated service charges which are directly related to the serving and/or delivery of food are not subject to sales/use tax. As taxpayer's service charge includes overhead such as insurance, the entire charge is subject to tax.

### **CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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